REMARKS

Claims 1-33 are currently pending in this application. By this Response, Applicant is amending claims 1, 14, 23, 29, 30 and 31. Applicant respectfully submits no new matter is added by these amendments and that such amendments are fully supported by the Application as originally filed. Accordingly, claims 1-33 are at issue.

The Examiner has rejected claims 1-33 under 35 U.S.C. 101 alleging "the claimed invention is directed to non-statutory subject matter, particularly, an abstract idea." Applicant respectfully traverses this rejection.

Applicant submits the following arguments in addition to the ones previously submitted in Applicant's prior Response which are herein incorporated by reference.

The Examiner maintains "that the claimed invention is not implemented on a specific apparatus; therefore, the invention is not directed to the technological arts." (Action of June 9, 2005, p. 2). However, the Court of Appeals for the Federal Circuit has stated that claims drawn to a method of doing business should not be categorized as a "business method" claim, instead they should be treated like any other process claim. *State Street Bank & Trust Co. v. Signature Financial Group, Inc.* 47 USPQ2d 1596, 1604 (Fed, Cir. 1998).

Notwithstanding the Federal Circuit's directive, the Examiner is apparently treating the invention claimed in the present application as if it were only a system or apparatus. However, claims 1-30 are directed to a "<u>method</u>" for administering and providing a loan product, and claims 31-33 are directed to the loan product.

Moreover, the claims have been amended herein to more clearly show that the claimed invention provides a tangible result. Specifically, one of the tangible results of the invention is that money for the uniquely structured loan product is transferred to the borrower. In this regard, claims 1, 23 and 29 have been amended to require "delivering said money to the borrower." Similarly, claim 14 has been amended to require "funding an account of the borrower with the first institution with said money from said loan," and claim 31 has been amended to require the money from the loan product be "funded to an account of a borrower at the first institution."

Thus, the invention is not directed to merely an abstract idea and the claims thus meet all requirements of 35 U.S.C. § 101.

In further support of this, the pending claims are similar in nature to the claims of recently granted U.S. Patent No. 6,840,857 ("the '857 patent," enclosed herewith) directed to a Lottery Insurance method. The claims of the '857 patent are set forth as method steps which require abstract determinations and payouts of money. No computer or other apparatus is effected or utilized in the claimed invention of the '857 patent. However, the payout of money is a tangible result that elevates the invention to be more than a mere abstract idea.

The Federal Circuit has found a tangible result in the realm of a business result, even though one or more components of the result would otherwise be deemed an abstract idea. For example, in *State Street v. Signature Financial Group*, the useful, concrete and tangible result was the final share price upon which investors and their brokers can make investment decisions. See *State Street*, 149 F.3d at 1374-75. That is, a tangible result was found in the business sense despite the fact that a share of a company (i.e., representing an ownership interest), and its final price can both be looked at as abstract ideas. In another example, the Federal Circuit in *AT&T Corp. v. Excel Comm. Inc.* found a lower long distance bill to be the useful, concrete and tangible result of the claimed invention. See *AT&T Corp. v. Excel Comm. Inc.*, 50 U.S.PQ.2d 1447, 1452 (Fed. Cir. 1999). Again, an abstract concept (i.e., a bill) that is a tangible business result. Similar to these examples, the present method provides a loan from a first institution where a second institution monitors the loan, and which delivers or otherwise provides money from the loan to the borrower. Moreover, the first institution is not at risk for any default of the loan. The presently claimed method, taken as a whole, provides a useful, concrete and tangible business result. Accordingly, Applicant respectfully requests the rejection under 35 U.S.C. 101 be withdrawn.

The Examiner has rejected claims 1-3, 5-16, 18-25 and 27-33 under 35 U.S.C. 102(e) as being anticipated by Levine. Applicant respectfully traverses this rejection.

Specifically, the Examiner (citing to col. 8, lines 40-44 and col. 5, lines 5-35 of Levine) maintains that Levine discloses the step of "obtaining indemnification for said first institution"

because the "servicing company decides what action is required, such as filing a claim in bankruptcy, filing a claim in court for overdue payments, etc." (Office Action of June 9, 2005, p. 3). That is, Levine discloses the servicing company "may institute proceedings against borrowers who are delinquent or in default." (Levine, col. 8, lines 40-44). However, as acknowledged in Levine, this ability to bring suit is not the same as the indemnification step of the present invention.

Claim 1 calls for "obtaining indemnification for said first institution of **all risk** for providing said money for said loan." (Emphasis added). That is, the first institution will not lose any money due to the delay in payment or default of the borrower. The second institution takes away **all risk** from the first institution by the indemnification. This a far superior result to that disclosed in Levine. In fact, Levine itself, notes the shortcomings of the service company entering into a lawsuit:

> If the borrower becomes insolvent or delinquent in their payments, the loan enters the next phase, referred to as a claims phase 124. In claims phase 124 the servicing company may enter a claim against the borrower in a bankruptcy proceeding, or file a lawsuit in court to foreclose on the mortgaged property or secure an order to garnish the borrower's wages. Because non-conforming loans are often second mortgages and are typically made for more than the value of the underlying collateral, **lenders are reluctant to enter this phase, because it generally results in the lender losing money**. In particular, when a non-conforming loan is used to back a security, and the borrower defaults on the loan, the collateral used to back the security disappears. This has, in the past lead to the demise of many of these types of securitization companies that back securities with non-conforming loans. (Emphasis added, Levine, col. 5, lines 20-35).

In other words, the lender in Levine is not indemnified of **all risk** as required by the claims of the present invention. That is, Levine is not directed toward a loan method or product as set forth in the present claims.

Instead, the present application provides for the first time, in effect, a risk free security that is not necessarily backed by a Government agency. That is, Banks and other Intermediaries can enter into a risk free security market utilizing the disclosed method and product. Levine is not directed to such an invention.

In contrast to the system of Levine, the present Application is for a business process wherein 100% of the risk of loss for the loan is transferred to the monitoring (i.e., servicing) entity. Specifically, as expressly set forth in claim 1, as amended herein, the method requires "obtaining indemnification for said first institution of all risk for providing said money for said loan." This step in the loan process is the first of its kind in the loan industry. Unlike the claimed method, Levine's process has the funding institution deciding which loans to fund and which loans to decline because the funding institution is at risk. In the present Application, the second institution (i.e., the Servicer) makes these decisions since the second institution is taking all of the risk. This contrasts sharply to Levine's process because the servicing company in Levine is managing the risk without ever taking any of the risk. Even with the ability of the service company to file or otherwise initiate a lawsuit to collect on delinquent or defaulted loan payments, the loaning entity is still at risk for the loan and will take the loss to the extent such lawsuits do not result in full satisfaction of the remaining loan amount. Moreover, it is not clear from Levine whether or not the loan entity would be responsible for the costs of the lawsuit. Such costs would also effect the overall amount recovered and provide further risk to the loan entity.

Accordingly, Applicant respectfully submits claim 1 is not anticipated by Levine and is patentable over this reference. See *RCA Corp. v. Applied Digital Data Systems, Inc.*, 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir. 1984) (Anticipation is established only when a single prior art reference discloses each and every element of a claimed invention.).

Claims 2-3 and 4-13 depend on claim 1, either directly or indirectly, and include each of its limitations. Accordingly, Applicant respectfully submits claims 2-3 and 4-13 are also patentable over Levine.

Independent claims 14, 23, 29 also include, among other steps, the step of obtaining indemnification against all risk. Independent claim 31 is directed to a loan product wherein money provided from the first institution is insured against all risk by a second institution. Accordingly, for the reasons given above with respect to claim 1, Applicant respectfully submits claims 14, 23, 29 and 31 are not anticipated by Levine and are patentable over Levine.

Claims 15-16 and 18-22 depend on claim 14, either directly or indirectly, and include each of its limitations, claim 24-25 and 27-28 depend on claim 23, either directly or indirectly, and include each of its limitations, claim 30 depends on claim 29 and includes each of its limitations, and claims 32-33 depend on claim 31 and include each of its limitations. Accordingly, Applicant respectfully submits, claims 15-16, 18-22, 24-25, 27-28, 30 and 32-33 are also patentable over Levine.

The Examiner has rejected claims 4, 17 and 26 under 35 U.S.C. 103(a) as being unpatentable over Levine. Applicant respectfully traverses this rejection.

As set forth above, Applicant submits claims 1, 14 and 23 are patentable over Levine. Claim 4 indirectly depends on claim 1 and includes each of its limitations, claim 17 indirectly depends on claim 14 and includes each of its limitations, and claim 26 depends on claim 23 and includes each of its limitations. Accordingly, for the reasons given above with respect to claims 1, 14 and 23, Applicant respectfully submits claims 4, 17 and 26 are patentable over Levine.

Additionally, the Examiner has cited to Levine's example of a mortgage lender requiring the borrower to obtain "homeowner's insurance" to protect the lender from the loss of collateral as similar to the present invention. However, this type of insurance protects the money supplier from loss of *the collateral*, and is not an example providing indemnification of all risk for providing the money for the loan.

As noted by the Examiner, lenders have used various forms of insurance as a way of 'lowering risk' or 'laying off risk' for years. However, all such insurance has specific applications and specific limitations wherein the "indemnification" method contained in this Application does not have such limits. Further, money providers must first "have risk" so they can then "insure it" or "lay it off". One naturally precedes the other. In the present invention, the money providers fund into a situation which inherently has no upfront risk in its design. So there would never be a need to "insure" or "lay off" risk because none is ever taken in the first place.

CONCLUSION

In light of the foregoing amendments and remarks, Applicant respectfully requests reconsideration and allowance of claims 1-33.

Respectfully submitted,

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CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail, postage prepaid, in an envelope addressed to: MAIL STOP RCE, Commissioner for Patents, PO Box 1450, Alexandria, VA 22313-1450, on September 9, 2005.

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